


MEMORANDUM DM 03-01

TO: All Virginia Underground Coal Mine Operators


FROM: Frank A. Linkous, Chief Division of Mines

SUBJECT: State-Designated Mine Rescue

DATE: January 29, 2003

Sections 45.1-161.73 through 45.1-161.76 of the Coal Mine Safety Laws of Virginia provide for state-designated mine rescue teams. These teams are also recognized by the Federal Mine Safety and Health Administration under Title 30, Part 49 of the Code of Federal Regulations. Three companies employing mine rescue teams have agreed to serve as state designated mine rescue teams. The companies are:

Dickenson-Russell Coal Company, LLC
Lone Mountain Processing, Inc.
Paramont Coal Company Virginia, LLC

Each company provides a properly maintained mine rescue station and readily available mine rescue teams. Should a change occur in the state designated mine rescue teams, we will inform you at a later date.

Each mine operator wishing to have the state-designated mine rescue teams assigned to a mine must complete the following procedure:

- 1.) Complete the enclosed agreement. A separate agreement must be completed and returned for each mine to be served by the state-designated mine rescue teams.
- 2.) Submit the annual rescue fee under Section 3. Compensation of the original agreement. This fee of \$2,400.00 is required for each mine and must be in the form of a money order, cashier's check or certified check payable to the Treasurer of Virginia. The company may elect to pay the annual fee in four equal installments due February 15, May 15, August 15 and November 15, 2003.

January 10, 2003

- 3.) Pursuant to Virginia Code 45.1-161.76A submit a certificate of insurance providing evidence of workers' compensation coverage whereby the members of the team shall be deemed to be within the employment of the operator of the mine at which the disaster occurred. The certificate must name the Department of Mines, Minerals and Energy, Division of Mines as the holder and bear an endorsement requiring that the insurer notify the Department of Mines, Minerals and Energy, Division of Mines, whenever substantive changes are made in the policy including any termination, cancellation or failure to renew. Failure to maintain continual coverage shall result in the cancellation of the agreement between the Division and the Company.

Mines currently enrolled in the state-designated mine rescue program: Your coverage by state-designated mine rescue teams expires February 15, 2003. You must act to renew your agreement prior to February 15, 2003 to continue state-designated mine rescue team coverage.

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Enclosure

AGREEMENT

This Agreement made this _____ day of _____, 20____, by and between the Commonwealth of Virginia, Department of Mines, Minerals and Energy, Division of Mines (hereinafter referred to as the Division) and

	/	
	Covered Mine Operation	
Company Name (herein referred to as "Company")	Mine No./Name	Mine Index No.

In consideration of the mutual covenants and stipulations set out herein, the Division and the Company agree as follows:

1. **DEFINITION**: For purposes of this Agreement, the following definition of "Mine Rescue Services" and/or "Mine Rescue Work" will apply:

Subject to the provisions of Virginia Code §§ 45.1-161.67 through 45.1-161.76, Mine Rescue Services and/or Mine Rescue Work shall mean services or work to search for, rescue, or transport a person or persons endangered, trapped, injured or killed in a mine disaster or emergency situation and which must be performed by a mine rescue team equipped with individual breathing apparatus. Mine rescue work shall also include any rehabilitation work in the mine which is necessary to search for, rescue or transport any person or persons in the mine. For purposes of this agreement, activities such as penetrating and exploring old works, breaching sealed areas and similar efforts requiring the use of personnel with self-contained breathing apparatus are not considered Mine Rescue Work.

2. **SCOPE OF SERVICE**: Pursuant to Va. Code § 45.1-161.73, conditioned upon the payment by the Company to the Division of a fee in the amount provided in Paragraph 3 below, for the mine owned or operated by the Company which is the subject of the terms of this Agreement (herein "Covered Mine Operation"), the Division shall make available two (2) or more state designated mine rescue teams (herein "Teams") to perform mine rescue work at the Covered Mine Operation.

3. **COMPENSATION**: Annual mine rescue fee for the Covered Mine Operation in the amount of \$2,400 is due and payable to the Division at time of execution of this Agreement (herein "Mine Rescue Fee"). However, the Company may elect in writing to pay the Mine Rescue Fee in four equal installments with \$600.00 due on February 15th, May 15th,

August 15th, and November 15th. Indicate the choice of fee payment below:

- ☐ **The Company elects to pay the Mine Rescue Fee in full.**
- ☐ **The Company elects to pay the Mine Rescue Fee in four equal installments.**

In the event the term of this Agreement is less than a full year, then the Mine Rescue Fee shall be prorated with the fee calculated at the rate of \$200.00 per month. The fees are non-refundable.

This Agreement is non-transferable. However, in the event the Mine Rescue Fee is paid in advance, and thereafter the name of the Covered Mine Operation(s) is changed or all the equipment and personnel at a Covered Mine Operation are moved to another location due to depletion of reserves or due to adverse conditions, then upon written request to and approval by the Chief, the unused portion of the Mine Rescue Fee paid hereunder may be applied to Mine Rescue Fees which become due for the new operation.

- 4. DURATION OF COVERAGE: The services to be provided pursuant to this Agreement shall commence on the later of February 16, 2003 or the date this Agreement is fully executed, and said services shall terminate on the sooner of February 15, 2004 or the date of termination established pursuant to Paragraph 7 below.**
- 5. LIABILITY: Pursuant to VA Code § 45.1-161.76.A, for the purpose of workers' compensation coverage during any mine disaster to which the Team responds, the members of the Team shall be deemed to be within the employment of the operator of the Covered Mine Operation at which the disaster occurred. Each operator to whose mine the Team is assigned shall provide insurance coverage for workers' compensation liability and shall submit a certificate of such insurance to the Division and to the Team, which certificate shall be updated every six (6) months. The certificate shall name the Department of Mines, Minerals, and Energy, Division of Mines as the holder of such certificate. The certificate shall**

bear an endorsement requiring that the insurer give the Department of Mines, Minerals, and Energy, Division of Mines, at least ten (10) days written notice whenever substantive changes are made in the policy including any termination, cancellation or failure to renew. The Division or the Team may require an additional certificate at any time if it has reason to believe that proper coverage has ceased, been canceled or does not exist. Failure to submit such certification to the Division and to the Team may result in the cancellation of any agreement between the Division and the operator, and shall be sufficient cause for the Team(s) to refuse to respond to a mine owned or operated by that operator.

Pursuant to VA Code § 45.1-161.76.B, the members of the Team engaging in rescue work at a mine shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission is the result of gross negligence or willful misconduct. Pursuant to VA Code § 45.1-161.76.C, any operator providing personnel for the Team to engage in rescue work at a mine not owned or operated by the operator shall not be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

- 6. DUTIES OF TEAMS AND COMPANY: When requested by the Division or by the operator of the Covered Mine Operation to which the Team has been assigned to perform rescue work, the Team shall respond to perform rescue work unless the Team is already responding to a prior request, is engaged in rescue work at another mine, or is competing in a mine rescue contest. The Team shall not be required to perform any rescue work if the person or persons in charge of the Team, after arrival at the mine, in his or their sole discretion determines that the Team's performance of the requested work would likely result in injury or death to the Team members.**

The Team is responsible for equipping each member of the Team and any and all of its mine rescue stations. The Team shall be responsible for maintaining its

equipment in a safe, operable and permissible condition. The Team is responsible for training its members in proper mine rescue procedures. The Team shall at all times meet the regulatory requirements of the Federal Mine Safety and Health Administration contained in 30 CFR Part 49 or any successor provision. The team shall provide all the equipment and materials set out in 30 CFR Section 49.6, as well as any other equipment that is used by mine rescue teams but is not normally used in the day-to-day operation of a mine. All other equipment and materials necessary to do the Mine Rescue Work shall be supplied by the covered mine operation and shall be available at the mine.

- 7. CANCELLATION AND TERMINATION: The Company may terminate this agreement at any time upon written notice to the Division. The Division may cancel or terminate this Agreement upon written notice to the Company upon the happening of one or more of the following events:**
- a. During the duration of this Agreement, the Company fails to pay the annual fee, or any applicable installment thereof, by the end of the month in which it is due;**
 - b. The Company fails or refuses to maintain Worker's Compensation Insurance which covers the Teams assigned to its Covered Mine Operation;**
 - c. The Company fails to submit to the Division a certificate of coverage for its Worker's Compensation Insurance within seven (7) days of being requested by the Division to do so; or**
 - d. If at any time during the term of this Agreement, the number of Teams participating is insufficient to make available to the Company at least two (2) Teams.**
- 8. ENTIRE AGREEMENT: The entire Agreement between the parties is contained herein and in Va. Code §§ 45.1-161.73 through 45.1-161.76, which are incorporated herein by reference. No amendment or modification of this**

Agreement shall be effective unless it is reduced to writing and signed by both parties. This Agreement is expressly subject to any changes in State or Federal laws, rules or regulations that affect the services to be rendered pursuant hereto. This agreement has been executed pursuant to the laws and regulations of the Commonwealth of Virginia. Any disputes arising out of this agreement will be decided under the laws of Virginia. This Agreement is being executed in duplicate effective as of the day and year first above written.

Company:

By:

Title:

Commonwealth of Virginia
Department of Mines, Minerals and Energy
Division of Mines

By:

Frank A. Linkous, Chief
Division of Mines

Rev. 01/03